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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
PHAM, TUAN	

ART UNIT	PAPER NUMBER
2643	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/992,855	FRASER ET AL.	
	Examiner	Art Unit	
	TUAN A PHAM	2643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 December 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on 12/20/2004 have been fully considered but they are not persuasive.

A/. In response to applicant's remark in the first paragraph, on page 9, Applicant argues that the Parsa et al. reference (U.S. No.: 6,757,319) does not teach "sending a modem carrier level instruction from the communication node to adjust the modem carrier level based on the determination" in claims 1, 16, and 20.

In response to applicant's arguments as stated above, the Examiner respectfully disagrees with the Applicant's argument. Applicant should refer to page 3 of the Office Action where the Examiner interpreted the modem carrier level as a power level or signal strength (see col.9, ln.58-67, col.10, ln.1-8, col.11, ln.65-67, col.12, ln.1-3). Furthermore, Applicant should refer back to the specification of the invention at page 3, lines 15-21, the modem carrier level is the signal strength for use in the wireless communication transmission. Therefore, the teachings of Parsa et al. reference still read on.

B/. In response to applicant's remark in the second paragraph, on page 7, with respect to claim 5, Applicant argues that Parsa et al. (U.S. No. : 6,757,319) does not teach "adjusting the modem carrier level in response to the modem carrier level instruction".

In response to applicant's arguments as stated above, the Examiner respectfully disagrees with the Applicant's argument. Parsa teaches mobile station operable as a modem capable to perform data transmission to adjust the power level in response to the instruction sending from the base station (see col.9, ln.58-67, col.10, ln.1-8). Therefore, the teachings of Parsa et al. reference still read on.

C/. In response to applicant's remark in the second paragraph, on page 7, with respect to claim 6, Applicant argues Parsa et al. (U.S. No. : 6,757,319) does not teach "the modem carrier level is adjusted more than one time during a communication session".

In response to applicant's arguments as stated above, the Examiner respectfully disagrees with the Applicant's argument. Parsa teach the base station continually measures the power level signal of mobile station on the CPCH channel. If the power level signal is higher or lower than the threshold level during the transmitting, then the base station repeatly sends the instruction to adjust the power signal up or down depending on the received signal level at the receive (see col.9, ln.58-67). Therefore, the base station repeatly adjusts or adjusts the power level signal more than one time during the transmitting.

D/. In response to applicant's remark in the second paragraph, on page 7, with respect to claim 7-8, Applicant argues that Parsa et al. (U.S. No. : 6,757,319) does not teach "single measurement and plurality of measurement through out a communication session".

In response to applicant's arguments as stated above, the Examiner respectfully disagrees with the Applicant's argument. Parsa teach the base station continually measures the power level signal of mobile station on the CPCH channel (see col.9, ln.58-67).

E/. In response to applicant's remark in the last paragraph, on page 7, with respect to claim 9, claim 9 is depending on claim 8. Therefore, the rejection of claim 9 is still maintained.

F/. In response to applicant's remark in the third paragraph, on page 7, with respect to claim 15, Applicant argues that Parsa et al. (U.S. No. : 6,757,319) does not teach "the prescribled level is based on a reference modem carrier level at the communication node".

In response to applicant's arguments as stated above, the Examiner respectfully disagrees with the Applicant's argument. Parsa teach the threshold value of power level signal, the base station is based on the threshold value for adjusting the power level of mobile station (see col.9, ln.58-67). Therefore, the teaching of Parsa et al. reference still read on.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. **Claims 1, 5-8, 10-16, and 18-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Parsa et al. (U.S. Patent No.: 6,757,319, hereinafter, "Parsa").**

Regarding claims 1, 16, and 20, Parsa teaches a method, computer usable medium and wireless modem carrier level control system comprising (see figure 3):

means for receiving a modem carrier (i.e., transceiver) at a communication node (i.e., base station)(see figure 3, base station 13, transceiver 17, col.7, ln.12-20, col.9, ln.58-67),

means for measuring a modem carrier signal strength (see col.9, ln.58-67),

means for determining whether a modem carrier signal strength is at a prescribed level (i.e., threshold value)(see col.9, ln.58-67, col.10, ln.1-8), and

means for sending a modem carrier level instruction from the communication node to adjust the modem carrier level based on the determination (see col.9, ln.58-67, col.10, ln.1-8, col.11, ln.65-67, col.12, ln.1-3).

Regarding claims 5, 18 and 21, Parsa further teaches the method adjusting the modem carrier level in response to the modem carrier level instruction (see col.9, ln.58-67, col.10, ln.1-8).

Regarding claims 6 and 19, Parsa further teaches the method wherein the modem carrier level is adjusted more than one time during a communication session (see col.9, ln.58-67, col.10, ln.1-8). The base station continually measures the power level during the transmission. Therefore, the base station is adjusted the power level more than one time during a communication section.

Regarding claim 7, Parsa further teaches the method measuring the modem carrier signal strength comprises making a single measurement at a beginning of a data communication segment (see col.6, ln.47-67).

Regarding claim 8, Parsa further teaches the method measuring the modem carrier signal strength comprises making a plurality of measurements throughout a communication session (see col.9, ln.58-67).

Regarding claim 10, Parsa further teaches the method wherein the modem carrier is received from an analog modem (see figure 3, computer 23, PC 23 should be included a analog modem).

Regarding claim 11, Parsa further teaches the method wherein the modem carrier is received from a digital modem (see figure 5, transceiver).

Regarding claim 12, Parsa further teaches the method wherein the modem carrier is received from a modem located in a mobile communication device (see figure 3, mobile station 15, col.7, ln.15-20).

Regarding claim 13, Parsa further teaches the method wherein the wireless communication system is an analog mobile telephone system (see figure 3, Packet switched network 19, col.7, ln.21-29).

Regarding claim 14, Parsa further teaches the method wherein the wireless communication system is a digital mobile telephone system (see figure 3, RNC 11, col.7, ln.21-29).

Regarding claim 15, Parsa further teaches the method wherein the prescribed level is based on a reference modem carrier level at the communication node (see col.9, ln.58-67, col.10, ln.1-8).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. **Claims 2-4, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parsa et al. (U.S. Patent No.: 6,757,319, hereinafter, "Parsa") into view of Mannering et al. (U.S. Patent No.: 6,137,839, hereinafter, "Mannering").**

Regarding claims 2 and 17, Parsa teaches a method of wireless modem carrier level control system comprising (see figure 3):

means for receiving a modem carrier (i.e., transceiver) at a communication node (i.e., base station)(see figure 3, base station 13, transceiver 17, col.7, ln.12-20, col.9, ln.58-67),

means for measuring a modem carrier signal strength (see col.9, ln.58-67),

means for determining whether a modem carrier signal strength is at a prescribed level (i.e., threshold value)(see col.9, ln.58-67, col.10, ln.1-8), and

means for sending a modem carrier level instruction from the communication node to adjust the modem carrier level based on the determination (see col.9, ln.58-67, col.10, ln.1-8, col.11, ln.65-67, col.12, ln.1-3).

It should be noticed that Parsa fails to teaches a modem carrier level parameter. However, Mannering teaches such feature (see col.3, ln.10-16).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Mannering into view of Parsa in order to transmit a higher bit rate for video as suggested by Mannering at column 4, lines 24-32.

Regarding claim 3, Mannering further teaches the modem carrier level parameter comprises a range between one and eight bits of the modem carrier level (see col.3, ln.10-16).

Regarding claim 4, Mannering further teaches the modem carrier level instruction comprises select frequency tones (see col.14, ln.30-36).

6. **Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Parsa et al. (U.S. Patent No.: 6,757,319, hereinafter, "Parsa") into view of Westerlage et al. (U.S. Patent No.: 6,141,404, hereinafter,"Westerlage").**

Regarding claim 9, Parsa teaches a method of wireless modem carrier level control system comprising (see figure 3):

receiving a modem carrier (i.e., transceiver) at a communication node (i.e., base station)(see figure 3, base station 13, transceiver 17, col.7, ln.12-20, col.9, ln.58-67),

measuring a modem carrier signal strength (see col.9, ln.58-67),

determining whether a modem carrier signal strength is at a prescribed level (i.e., threshold value)(see col.9, ln.58-67, col.10, ln.1-8),

sending a modem carrier level instruction from the communication node to adjust the modem carrier level based on the determination (see col.9, ln.58-67, col.10, ln.1-8), and

measuring the modem carrier signal strength comprises making a plurality of measurements throughout a communication session (see col.9, ln.58-67).

It should be noticed that Parsa fails to clearly teach the communication session comprises one or more data communication segments and one or more voice communication segments. However, Westerlage teaches such features (see figure 5, col.9, ln.11-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Westerlage into view of Parsa in order to transmit both voice and data in communication system.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Tuan A. Pham** whose telephone number is (571) 272-8097. The examiner can normally be reached on Monday through Friday, 8:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Curtis Kuntz can be reached on (571) 272-7499 and

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Art Unit 2643
April 8, 2005
Examiner

Tuan Pham

BINH TIEU
PRIMARY EXAMINER